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IN THE

Supreme Court of the United States

October Term, 1959. No. 442.

LOCAL NO. 9, JOURNEYMEN BARBERS, HAIRDRESSERS AND COSMETOLOGISTS INTERNATIONAL UNION; EDWARD MAGRISE, President; VINCENT PACE, Secretary; AFL-CIO; JOSEPH MOLLE and JAMES FRANGELLI,

Petitioners,

vs.

LOUIS J. GRIMALDI,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

BRIEF FOR RESPONDENT IN OPPOSITION.

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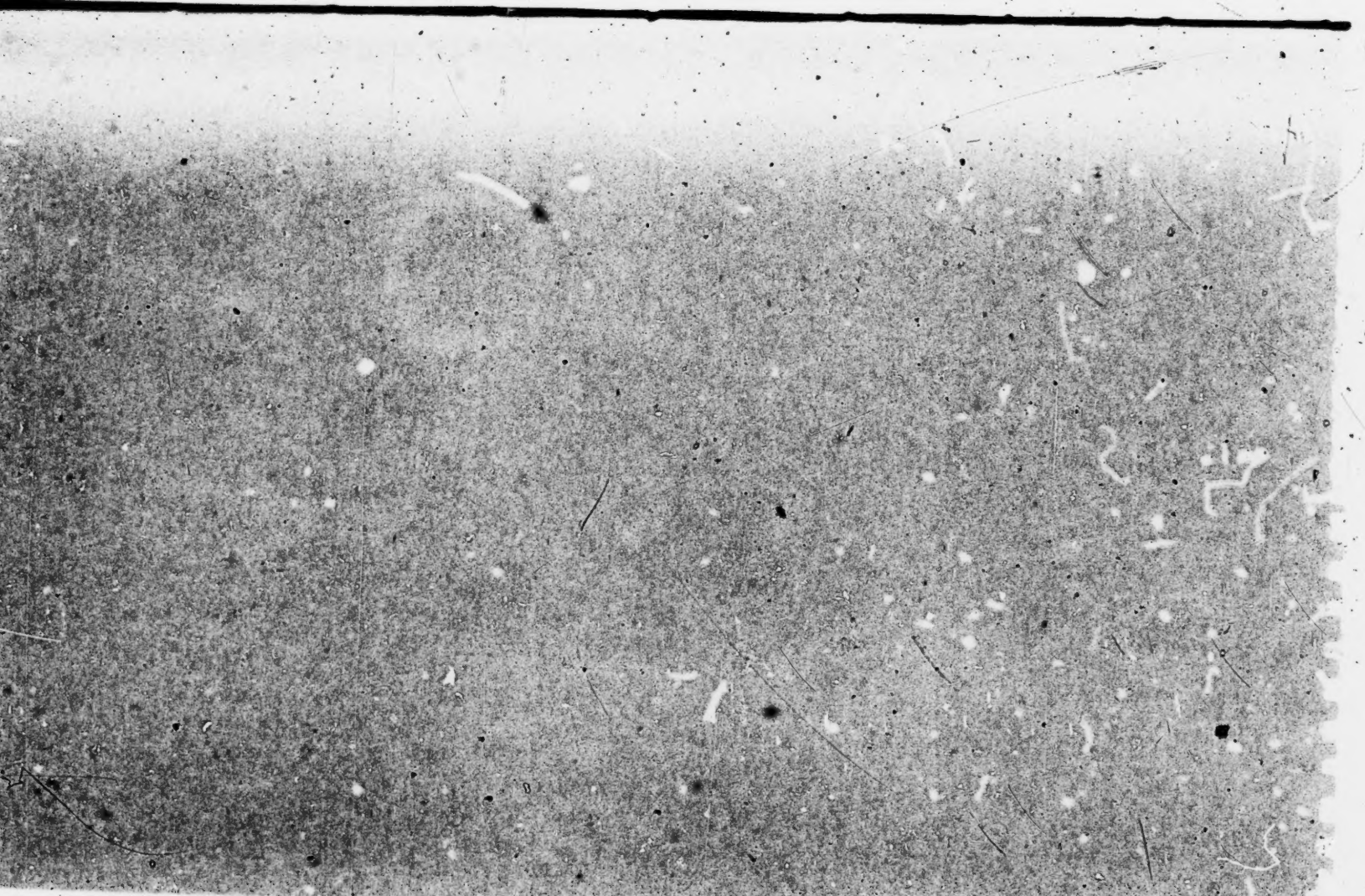

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OPINIONS BELOW.

The Opinion of the Court of Common Pleas No. 5 of Philadelphia County (R-162) is unreported. The Opinion of the Supreme Court of Pennsylvania is reported at 397 Pa. 6 (1959).

JURISDICTION.

The jurisdictional requirements are adequately set forth in the Petition.

QUESTIONS PRESENTED.

1. Is the enjoining of a Labor Union from picketing the proprietor of a one man shop, without employees, with whom the Union has no labor dispute nor controversy over hours, wages, prices or working conditions, but whom the Union seeks to compel to affiliate with the Union, an invasion of freedom of speech, and a violation of First and Fourteenth Amendments of the Constitution of the United States.

2. Whether the doctrine laid down in International Brotherhood of *Teamsters vs. Hanke, et al.*, 339 U. S. 470 (1950), that is, that the State has the power, where there is no labor dispute, to declare a policy in favor of self-employers and to prohibit picketing of a business conducted by an owner without employees, and intended solely to compel him to become a union member, is still in effect.

3. Whether a State, in enforcing a public policy, announced either by its legislature or by its courts, can constitutionally enjoin peaceful picketing, aimed at thwarting that policy?

STATUTES INVOLVED.

The pertinent provisions of the Pennsylvania Labor Relations Act (43 Purd. Stat. 211, et sequi) and the Pennsylvania Labor Anti-Injunction Act (43 Purd. Stat. 206 a, et sequi) are set forth in the Appendix hereto at Ps. 15, 16.

STATEMENT OF THE CASE.

Louis J. Grimaldi, Plaintiff and Respondent in this case, operates a barber shop in Philadelphia, Pennsylvania, alone, and without employees. Respondent was also a member of, and Secretary of, the Pennsylvania League of Master Barbers, an educational and instructional non-profit corporation of Pennsylvania, having about five hundred members, mainly one-man shop barbers.

Defendant, Petitioner is styled a labor union but having various classes of membership, not exclusively employees.

In Philadelphia, there are approximately two thousand one-man barber shops, and between four hundred and five hundred shops where there are one or more barber employees.

Petitioner, through its agents, was in touch with Respondent initially in January, 1956, requesting him to join the Petitioner Union, and to bring with him the said League of Master Barbers. Respondent refused.

In March, 1956, Petitioner's agents held a meeting with Respondent and other officers of the Barbers League, requesting that they join Petitioner Union. Respondent and the League officers refused.

In April, 1956, Petitioner and its agents again met with Respondent and officers of the Barbers League and affiliation was again discussed. When Respondent and his group

still refused affiliation, Petitioner, through its agents, became abusive and threatening. Vile and vicious language was used to Respondent and his group, including threats of "the kiss of death," by picketing.

On July 31, 1956, Respondent's one-man shop was picketed. He suffered severe economic loss, undenied by Petitioner.

Equity action was begun on August 3, 1956, for an injunction, and following preliminary hearing, the pickets were withdrawn by agreement. Subsequently, hearing was held by a Chancellor, who found, after a full day of testimony, that there was no controversy as to terms or conditions of employment or of representation of employees. The Chancellor further found, from the testimony before him, that Petitioner, through its agents, had sought to intimidate Respondent, and the Barbers League, to affiliate with the Union by threats of force.

The exceptions of Petitioner to the Chancellor's Adjudication were argued before a Court en banc, and that Court upheld the Chancellor's findings, relying upon the principle that "the State has the power and the duty to take adequate steps to preserve the peace and to protect the privacy, the lives and the property of its residents, and that the State, in enforcing the public policy may constitutionally enjoin peaceful picketing aimed at preventing effectuation of that policy."

The Petitioner appealed to the Supreme Court of Pennsylvania, and after briefs filed; and oral argument, that Court upheld the Lower Court, stating that "the picketing in this case was not for organizational purposes and could not be for that purpose" and that "the picketing of a one-man establishment is an invasion of an American's freedom to determine his own economic destiny when he stands alone in an enterprise of his own." The Supreme Court of Pennsylvania further found that

> "The Local did not claim, and does not now claim, that Grimaldi was charging unfair prices or that he was

working unproper hours, or that he was undermining in any way the working conditions of journeymen barbers—those employed in other shops."

The policy of the "Pennsylvania Labor Relations Act," (Act of June 1, 1937 P. L. 1168, No. 294—Sect. 2) is recited as follows:

> "It is hereby declared to be the public policy of the State to encourage the practice and procedure of collective bargaining and *to protect the exercise by workers of full freedom of association, self-organization . . .*" (Emphasis supplied.)

The Pennsylvania "Labor Anti-Injunction Act" (Act of June 2, 1937 P. L. 1198—Sect. 1) recites "the public policy of this Commonwealth is hereby declared to be as follows:

> "a.) . . . The individual unorganized worker . . . *though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association . . .*" (Emphasis supplied.)

Each of these Acts, as is stated at length therein, was designed to encourage and protect collective bargaining between employees and employer, and to prevent injunctions where there is a dispute between employer and employees, where terms or conditions of employment are involved.

ARGUMENT.

The issue in this case is clear and precise.

There was no dispute between Petitioner Union and Respondent over hours, prices, working conditions or anything having to do with Respondent's operations. According to uncontradicted testimony, these were never discussed be-

tween the parties. Petitioner Union's sole dispute with Respondent, and with his fellow workers, was because he, and they, would not join the Union.

The economic conditions of the barbers, whether journeymen or self-employed, formed no part of the discussions between the Union representatives and the Respondent. The only demand of the Union was that Respondent join the Union, and when this demand was refused, the picketing followed. The only purpose of the picketing was, by economic strangulation of Respondent, to compel him to join the Union.

Respondent has no need for, nor desire to join, any organization which legally exists for the express purpose of providing the benefits of collective bargaining for employees in their dealings with employers.

The very heart of the labor movement is in collective bargaining. This right of employees to organize and to bargain collectively, achieved after a century of effort, is protected in Pennsylvania by its Labor Relations Act, and by its Labor Anti-Junction Act (Appendix pages 15, 16).

However, these self-same Acts which protect the employees in dealing with an employer, also protect the worker, so that the worker can "decline to association with his fellows" and he is granted "full freedom of association, self-organization."

The Pennsylvania Statutes appended hereto are exactly similar in language to the statutes of the State of Washington, on the same subjects and declared in the *Hanke* Case, 339 U. S. 470, and quoted in a footnote in the *Gazzam* Case, 339 U. S. 532, to be declaratory of the policy of that State in the protection of the proprietor, without employees, against picketing.

No organizational picketing was involved here. The right of employees to organize is unquestioned, and the right of union agents to attempt, by peaceful picketing, to organize employees so that the workers, as an organized group, can bargain collectively with the employer, is likewise beyond

doubt. These rights have been upheld many times by the Pennsylvania Supreme Court. But in upholding those rights, that Court has defined "organizational picketing" as

> "that is, to persuade non-union employees of an establishment to join a union." *Pappas vs. Local Joint Board*, 374 Pa. 34, 96 A. 2d 915, 916.

But there are no employees involved in this dispute between Petitioners and Respondent. Respondent is neither employer nor employee, and by organizing him into a union member, no rights of collective bargaining can be obtained for him. Respondent has no one to bargain with, or for.

No blanket injunction against picketing is here involved, but the protection of an individual worker, in his own business who is not in dispute with other workers in any manner whatsoever, is involved. Such worker is guaranteed protection by the legislative policy of the State, and in this case, the Courts of Pennsylvania have sought to carry out that policy.

The fallacy of Petitioner Union's position lies in the fact that by seeking to take into its membership, employees, employers, one-man operators, and anyone else connected with the business, it has ceased to be a Labor Union representing employees for bargaining purposes. However it seeks to retain all the benefits and protections of a Labor Union.

I.

THE DECISION BELOW IS CORRECT.

The Chancellor in the Court of Common Pleas of Philadelphia County heard all the evidence and found such evidence to be "overwhelming that the union was determined to use whatever force was required to march against their will the self-employed barbers into its 'employers guild,'" and that "the individual entrepreneur is entitled to protection against such coercion."

The Court en banc approved this finding and result, after a review of the testimony and oral argument.

The Supreme Court of Pennsylvania, with the record before it, and after oral argument, found that the Petitioner's picketing was not for organizational purposes and could not be for that purpose, that it was a flagrant violation of the law.

The Pennsylvania Supreme Court relies upon the *Hanke* Case, 339 U. S. 470. This case, protecting as it does, the self-employed against picketing, is actually not as favorable on its facts as is this case. In the *Hanke* Case, there was a dispute over hours of opening and closing. In order to obviate this dispute, the Union, by peaceful picketing, sought to compel Hanke and his sons, to join the Union. In the case at bar, there was no dispute whatsoever, over hours or anything connected with Respondent's conduct of his business.

The Supreme Court of Pennsylvania recognized this when it stated that "the Local did not claim . . . that Grimaldi . . . was undermining the working conditions of journeymen barbers—those employed in other shops."

Legislative protection was afforded "workers" who did not wish to associate in organization, by the statutes of Washington State, and this, in the *Hanke* case, was recognized by the Supreme Court of the State and by the United States Supreme Court. The very same protection, in the very same language, is granted by the Commonwealth of Pennsylvania, and its Supreme Court, following the *Hanke* Case, has given similar recognition.

The Supreme Court of Pennsylvania rejects Petitioner's contention that the picketing indulged in here, was an exercise of constitutionally guaranteed freedom of speech. But the Court recognizes that "while it is true that picketing is in the realm of free speech, it is by no means synonymous with talking." In this, the Court follows the many decisions of the Supreme Court of the United States, later herein discussed.

The Court further recognizes that picketing as a form of

communication is allowed where collective bargaining is involved but holds that there is, in this case, "no controversy between management and labor."

II.

THE QUESTION HERE INVOLVED HAS PREVIOUSLY BEEN DECIDED BY THE SUPREME COURT OF THE UNITED STATES AND THE DECISION OF THE SUPREME COURT OF PENNSYLVANIA IS IN ACCORD THEREWITH.

In *International Brotherhood of Teamsters vs. Hanke, et al.*, 339 U. S. 470, Justice Frankfurter speaking for the Court states the following:

> "The question is this: Does the Fourteenth Amendment of the Constitution bar a State from use of the injunction to prohibit the picketing of a business conducted by the owner himself without employees in order to secure compliance by him with a demand to become a union shop?"

In the *Hanke* Case, there was even a dispute over hours of opening and closing, which is not present in this case. Moreover, in the *Hanke* Case, the Washington statute protecting the worker's right to associate or to decline to associate is similar in language to the Pennsylvania statute.

The *Hanke* opinion further states:

> "Washington here concluded that, even though the relief afforded the Hankes and Cline entailed restriction upon communication that the unions sought to convey though picketing, it was more important to safeguard the value which the State placed upon self-employers, leaving all other channels open to the Union."

That the *A. F. of L. vs. Swing*, 312 U. S. 321; *Bakery & Pastry Drivers Local vs. Wohl*, 315 U. S. 769, and *Cafeteria Employees Union vs. Angelos*, 320 U. S. 293, cases, are not in point on this question is evidenced by the statement as to those cases in the *Hanke* opinion:

> "The power of a State to declare a policy in favor of self-employers and to make conduct restrictive of self-employment unlawful was not considered in those cases."

That picketing is not, per se, freedom of speech, is reasserted in the *Hanke* Case:

> "We must start with the fact that while picketing has an ingredient of communication it cannot dogmatically be equated with the constitutionally protected freedom of speech. Our decisions reflect recognition that picketing is 'indeed a hybrid.'"

III.

THE SUPREME COURT OF THE UNITED STATES HAS APPROVED THE ENJOINING OF PEACEFUL PICKETING BY A STATE WHERE A PUBLIC POLICY OF THAT STATE MIGHT BE NEGATIVED BY SUCH PICKETING.

The authority of the State to impose reasonable regulations upon picketing was early recognized by this Court. In *Carpenters and Joiners Union vs. Ritter's Cafe*, 315 U. S. 722 (1942), this Court said:

> "Where, as here, claims on behalf of free speech are met with claims on behalf of the authority of the State to impose reasonable regulations for the protection of the community as a whole, the duty of this Court is plain."

Petitioners place great reliance on the case of *Senn vs. Tile Layers Union*, 301 U. S. 468 (1937). In the Opinion by Justice Brandeis he notes that Senn "employed one or two journeymen tile layers and one or two helpers." It was not the situation of a one-man shop without employees. Furthermore, the Statute then in force in the State of Wisconsin authorized in the broadest manner picketing as publicity on a level with advertising and the Supreme Court of Wisconsin found that under the statute then in force the means employed and the end sought by the Union was legal under its then law. The distinction between the *Senn* Case and the case at bar is clear upon the reading of the following excerpt from Justice Brandeis' opinion:

> "The laws of Wisconsin, as declared by its highest court, permit unions to endeavor to induce an employer, when unionizing a shop, to agree to refrain from working in his business with his own hands—so to endeavor although none of his employees is a member of a union. *Whether it was wise for the State to permit unions to do so is a question of its public policy—not our concern.*" (Emphasis supplied.)

It is evident from the foregoing that even as early as the *Senn* Case, this Court felt that the determination of the validity or the invalidity of the picketing was a matter for the State to determine as a question of its public policy.

That the foregoing is a correct conclusion is evidenced by the Wisconsin Supreme Court opinion (the same State out of which the *Senn* Case arose) in *Brown vs. Sucher*, 258 Wisconsin 123 (1950). In that case where a sole proprietorship was involved and the Defendant was the representative of the Building Service Employees Union who had picketed, with others, Plaintiff's place of business, to induce the sole proprietor to join the Union, Justice Fairchild speaking for the Wisconsin Supreme Court affirmed the decision of the lower court, as follows:

> "The decision in the Circuit Court recognizes the purposes of the law with relation to labor disputes, and in accordance with that law protects the interest of the proprietor of a business operated by himself and so conducted that at the time there was neither a labor dispute nor reason for one."

The Opinion quotes from Justice Frankfurter's opinion in the *Hanke* Case, and refers to the *Senn* Case, reciting that the statutes of Wisconsin as to broad rights of picketing were amended subsequent to the *Senn* Case. The Opinion in *Brown vs. Sucher* further quotes from the *Hanke* Case in its reference to the *Senn* Case in which the following statement is made by Justice Frankfurter therein:

> "If Wisconsin could permit such picketing as a matter of policy it must be equally free as a matter of policy to choose not to permit it . . ."

It is submitted that the *Senn* Case clearly illustrates that the policy of the State, whether by statute or by court decision, relative to picketing, unless flagrantly abused, will not be disturbed by the Supreme Court of the United States, and that the statutes and the policy of the State should govern.

In the *Building Service Employees Union vs. Gazzam*, 339 U. S. 532 (1950), where an employer-employee situation was involved, and which was an appeal from Washington State, Justice Minton speaking for the Supreme Court of the United States, holds:

> "The State of Washington has by legislative enactment declared its public policy on the subject of organization of workers for bargaining purposes . . . under the so enunciated public policy of Washington, it is clear that workers shall be free to join or not to join the Union . . . to judge the wisdom of such policy is not for us; ours is but to determine whether a re-

straint of picketing in reliance on the policy is unwarranted encroachment upon rights protected from State abridgment by the Fourteenth Amendment . . . Abuse by workers or organizations of workers of the declared public policy of such an Act is no more to be condoned than violation of prohibition against judicial interference with certain activities of workers.

That the State, in enforcing some public policy, whether announced by its legislature or by its Courts, could constitutionally enjoin peaceful picketing designed to prevent effectuation of that policy, has been upheld by this Court in a long line of cases, of which the following are but some:

Kovacs vs. Cooper, 336 U. S. 77 (1949);
Giboney vs. Empire Storage & Ice Co., 336 U. S. 490 (1949);
Hughes vs. California Supreme Court, 339 U. S. 460 (1950);
IEBW Case, 339 U. S. 694 (1951);
Teamsters Union vs. Vogt, 354 U. S. 284 (1957);
Pappas vs. Stacey—Certiorari denied, 350 U. S. 870 (1956), 151 Me. 36, 116 A. 2d 497 (1955).

A reading of the Petition for Writ of Certiorari in the case of *Neville vs. Chauffeurs, Teamsters Local*, 356 U. S. 341 (1958), makes it clear that that case has no application to the case at bar.

In the *Neville* Case, two points were made in the Petition for Certiorari, the first that the question was for federal jurisdiction, as being governed by the National Labor Relations Act; the second was that there was no evidence of the violence required of picketing sufficient to bring it within the decision in *Milkwagon Drivers vs. Meadowmoor Dairies*, 312 U. S. 387, upon which the Kansas Supreme Court flatly relied.

It appears from the action of the Supreme Court of the United States in reversing that it approved one or both of

these propositions. However, neither the facts nor the result in the *Neville* Case are remotely concerned with this case.

There is no need for a new, all-clarifying decision by this Court on the question of picketing. The decisions of this Court are clear and unequivocal on the facts in this case.

CONCLUSION

For the foregoing reasons it is respectfully requested that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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JOHN RYAN,
Counsel for Respondent.

October 21, 1959.

APPENDIX.

This Act shall be known, and may be cited, as the "Pennsylvania Labor Relations Act" 1937, June 1, P. L. 1168, No. 294, Section 1.

TITLE OF ACT.

An act to protect the right of employees to organize and bargain collectively, creating the Pennsylvania Labor Relations Board . . . providing for the right of employees to organize and bargain collectively . . .

a. Under prevailing economic conditions, individual employees do not possess full freedom of association or actual liberty of contract . . .

c. In the interpretation and application of this Act and otherwise, it is hereby declared to be the public policy of the State to encourage the practice and procedure of collective bargaining and to protect the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection, free from the interference, restraint or coercion of their employers . . ."

This Act shall be known and may be cited, as the "Labor Anti-Injunction Act" 1937 June 2, P. L. 1198, Section 1.

TITLE OF ACT.

An act relating to employees and organizations thereof; defining labor disputes; prescribing the procedure by which and the conditions under which injunctions may be granted in such disputes and the scope thereof.

In the interpretation of this act and in determining the jurisdiction and authority of the courts of this Commonwealth, as such jurisdiction and authority are defined and limited in this act, the public policy of this Commonwealth is hereby declared as follows:

(a) Under prevailing economic conditions developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to association with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint or coercion of employers of labor or their agents in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.